IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

WP(C).No. 32759 OF 2006(Y)

PETITIONER:

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1. KERALA TANK LORRY OWNERS FEDERATION,
   32/21644, NEAR SPICES BOARD, VENNALA P.O.,
   COCHIN-682328, REPRESENTED BY ITS SECRETARY,
   JACOB MANI.

2. JACOB MANI, S/O. A.S.MANI,
   AYROOKUZHIYIL HOUSE, 33/2165, PALARIVATTOM,
   BYE PASS, VENNALA P.O., KOCHI-28.

BY ADV. SRI.G.HARIHARAN
SRI.PRAVEEN.H.
SMT.K.G.SAROJINI
SRI.DEVAN K.MENON
SMT.V.GEETHA POTTI
SMT.N.C.SALINI

RESPONDENTS:

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1. UNION OF INDIA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   MINISTR OF SURFACE TRANSPORT, SANSAD MARG,
   NEW DELHI-110001.

2. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   TRANSPORT DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

3. TRANSPORT COMMISSIONER,
   MOTOR VEHICLES HEAD QUARTERS, TRANS TOWERS,
   VAZHUTHACAUD, THIRUVANANTHAPURAM.

4. REGIONAL TRANSPORT OFFICER,
CIVIL STATION, KAKKANAD, ERNAKULAM.

5. KERALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVAN, EAST FORT, THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING DIRECTOR.

6. VIGILANCE AND ANTI-CORRUPTION BUREAU,
THIRUVANANTHAPURAM, REPRESENTED BY ITS DIRECTOR.

7. AUTOMOBILE RESEARCH ASSOCIATION OF INDIA
102, VEDAL HILL, KOTHCUD, PUNE, MAHARASHTRA-38.

ADDITIONAL 8TH RESPONDENT:

KALOOR JOSEPH, AGED 56 YEARS, S/O. P.S. GEORGE,
PADAPURACKAL HOUSE, KALOOR, ERNAKULAM.

(ADDITIONAL 8TH RESPONDENT IS IMPLEADED AS PER
ORDER DATED 1.2.2007 ON I.A. 309/2007)

R5 BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC
SRI.ANCHAL C.VIJAYAN, CGC
R8 BY ADVS. M/S. .P.B.SAHASRANAMAN,
.K.JAGADEESH &
T.S.HARIKUMAR
GOVERNMENT PLEADER SRI. N. MANOJ KUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 8.1.2007, ALONG WITH WPC NO. 32374 OF 2006, WPC NO. 33655 OF 2006 & W.P.(C) 33137 OF 2006, THE COURT ON 1.2.2007, DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

W.P.© NOS: 32759, 33137, 32374 & 33655/2006

DATED THIS, THE 1ST DAY OF FEBRUARY, 2007

J U D G M E N T

As these writ petitions raise common questions of law, they are disposed of by this common judgment.

2. For the purpose of easy reference, the facts as stated in W.P.© 32759/2006 and exhibits produced therein are referred to.

3. The challenge made in this writ petition is against the circulars issued by the Transport Commissioner, Exts.P2 and P3 produced in W.P.© 32759/2006. By Ext.P2 circular, in continuation of the directions issued on 1.12.2004, certain directions are issued so as to comply with the judgment of the Supreme Court in S.L.P.(C) 4186/2004 for strict implementation of Rule 118(1) of CMV rules. It is stated the Supreme court has dismissed the appeal petition challenging the order of this Court insisting on fitment of speed governor and granted extension of time for implementing the order of this Court till 30.9.2005. The Department have to procure the equipments for checking the set speed and sealing the device and under such circumstances, it is decided to implement the order in

a phased manner in order to avoid discrimination among same class of vehicles and hardship due to non availability of sufficient quality of equipments in the market. The time frame for fitment of Speed Governors in different categories of vehicles is also stated in the said circular. As per Clause (g) of Ext.P2, the restrictions imposed will be applicable to vehicles registered in other States also while entering the State of Kerala. The Motor Vehicles Inspector in charge of the Check Posts will ensure that Stage Carriage and Heavy Transport vehicles enter into the State, or, any services from Check Posts would be rendered only if they are fitted with speed governor sets within the prescribed time limits. It is also stipulated that a certificate to this effect shall be issued from the respective check posts to the concerned vehicles while allowing them entry into the State.

3. Ext.P3 circular dated 9.8.2006, which was issued in compliance with the judgment in O.P. 34466/2000 of this Court, would read that a Notification No. G.O.(P) No.20/03/Tran. Dated 16.4.2003 was published as SRO No. 340/2003 prescribing that all state carriage and Heavy Transport Vehicles be fitted with a speed governor (speed controlling device) with effect from 1.9.2003 under Sub rule (1) Rule 118 of Central Motor Vehicles Rules, 1989. When that notification was not implemented in time, contempt proceedings were initiated in by filing C.C.C..

1422/2003 and directed the State to comply with the provisions on speed Governor as notified earlier by 29.2.2004. The Supreme Court also in its order dated 10.2.2005 in SLP No. 4166/2004 filed by Government had granted extension of time up to 30th September, 2005 for implementation of the order of this Court. Thus, the Notification published as SRO No. 340/2003 had been implemented in the State with effect from 1.10.2005. But the government had to rescind the notification issued as GO(P) 20/03/Tran. Dated 16.4.2003 by Notification GO(P) no. 29/2005/Tran. Dated 15.10.2005 due to circumstances which affected the economy of the State. Later Government of Kerala made fitment of speed governor in all types of Tropes Lorries except three wheelers mandatory vide GO(P) 0.05/2006/Tran. Dated 3.1.2006. However, the apex court initiated sue motu proceedings as CC(C) No. 139/2006 in SLP (C) 4186/2004 for not complying with its corneliam be premont the speed governor before 30th September, 2006. Subsequently, the Supreme Court granted time for implementation of speed governor. Hence the Government has now issued a re-notification making fitment of speed governor for all stage carriage and heavy transport vehicles vide G.O.(P) No. 42/2006/Tran. Dated 29.7.2006 published as SRO No. 568/06. In the circumstances, the following directions were issued.

"All Stage Carriages and Heavy Transport Vehicles henceforth shall be fitted with speed governor. All services to Stage Carriages and Heavy Transport Vehicles shall be rendered only if they are fitted with Speed Governor. The rule will be applicable to vehicles registered in other States entering the State of Kerala also. Motor Vehicles inspector in charge of Check Post will ensure that stage carriages and Heavy Transport Vehicles entering the State are fitted with Speed Governor set at the prescribed speed and sealed. A certificate to that effect shall be issued from Check Posts while allowing entry in to the State.

The Regional Transport officers/Joint Regional Transport Officers shall insist for an application in plain paper along with purchase bill showing the identification number and brand of the equipment. The Inspecting Officer shall verify, ensure and certify that:

(a) The identification number and brand name tally with the equipment fitted on the vehicle.

(b) The equipment is set of the prescribed speed and that is sealed properly.

(c) The equipment fitted is approved by any of the testing agencies specified in Rule 126 of the CMV rules for the make and model of the vehicle.

(d) The Registering/Additional Registering Authorities shall record the identification number, make and model of the speed governor in the registration Certificate and 'B' Register.

It will be the personal responsibility of all Regional Transport Officers and Joint Regional Transport officers to ensure complaints with the above

> directions strictly without any texity. The progress of action taken should be reported to this Office."

4. Though the petitioner has challenged the Circulars Exts.P2 and P3, it is clear that this circular was issued giving certain directions in the matter of implementation of fitment of speed governors to large type of vehicles. Thus, Ext.P3 is issued pursuant to the re-notification dated 29.7.2006 published as SRO 568/2006. This notification however, is neither produced nor challenged in this writ petition.

5. The contention of the petitioner is that the judgment of this court making it mandatory for fitment of speed governors were passed without hearing various organizations of operators who are likely to be affected by the directions of this Court. The first petitioner Association and its members are mainly engaged in operation of tanker lorries, mainly transporting petroleum products on contracts with various public limited companies in the State of Kerala and outside. The contracts are finalized after participation of operators in competitive be tender bids in strict compliance with tender conditions prescribed by the respective companies. The participants include operators within and outside the State. Though initially petitioners were not very much aggrieved by Ext.P2 notification, as the Government had made it mandatory that fitment of speed governors is a

must for the vehicles in State of Kerala as well as the vehicles registered outside Kerala, but which had to be operated in the State of Kerala or had to enter into the State in connection with their operations. However, the various operators registered outside the State have preferred W.P.© 30567/2006 and connected cases before this Court challenging the validity of Ext.P2 notification and the Government have taken the stand that the conditions stipulated in Ext.P2 circular will not be implemented as against vehicles outside the State and and the writ petition was closed with leave and liberty to approach this Court in case a future occasion arises. The grievance of the petitioner is that a discrimination is meted out in the matter of fitment of speed governor in that a vehicle registered in the State of Kerala are discriminated against the vehicles registered outside the State of Kerala which operates within the State of Kerala, and as a result of this, vehicles registered outside State of Kerala are at an advantageous position as they will be able to complete long distance operation at easy ways whereas the vehicles registered inside Kerala fitted with speed controlling devices will not be able to operate with the same efficiency as that the other state vehicles. It is also contended that the State of Kerala is the lone state in the Union of India, wherein fitment of speed governors has been made mandatory under the provisions of Rule 118 of the Central Motor Vehicles

Rules, 1989. It is also pointed out that the buses run by the K.S.R.T.C. which is a State owned Motor Transport Service is operating without fitment of speed governors as required under Ext.P2 notification. According to the petitioners, insistence for fitment of speed governor in the vehicles registered in State of Kerala alone by the Government is patently arbitrary, irrational, illogical, discriminatory and hence unsustainable.

In the counter affidavit filed by the State, it is averred that the issue of fitment of speed governor in Kerala was espoused in 1986 when the Regional Transport Authority, Ernakulam, decided to implement the same in Ernakulam city limits owing to increasing road accidents. But the same was withdrawn due to practical difficulties experienced at the time of implementation. Thereupon, O.P. 34466/2000 was filed seeking for a mandamus directing the Government, Transport Commissioner and the Director General of Police to implement Rule 118 of the Central Motor Vehicles rules, 1989 , in relation to the fitting of the speed controlling device in stage carriages. In the meantime, the power to issue notification under rule 118 had been transferred from the Central Government to the State Government with effect from 31.5.2002. Though the said rule envisages discretion on the part of the State Government to classify whichever transport vehicles to be fitted with speed governor, this Court by

judgment dated 24.9.2002 directed the State and the authorities to ensure that all stage carriage permits and Heavy Transport Vehicle permits already issued or to be issued henceforth shall contain a stipulation as too installation of a suitable speed governor which would ensure than the vehicle is not driven at a speed in excess of what is notified in respect of such a vehicle under S.O. No. 425(E) dated 9th June, 1989 which prescribed under Section 112 of the Act. Thus, the State had no discretionary power to comply with the directions of this Court. The review petition filed thereafter was dismissed by this Court and accordingly Government issued G.O.(P) No. 20/03/Tran. Dated 16.4.2003 published as SRO 340/2003 in the Kerala Gazatte Extraordinary No. 632 dated 21.4.2003 directing all the Stage Carriages and heavy transport vehicles to fit speed governor with effect from 1.9.2003 conforming to the standard AIS 018 and to be sealed with the official seal of the State Transport Authority or a Regional Transport Authority in such a way that it could not be removed or tampered with, without the seal being broken. Later the last date was extended to 1.12.2003. A contempt petition filed thereafter before this Court was also referred to wherein this Court ordered implementation of the Notification on or before 29.2.2004. The appeal therefrom to the Supreme Court was also without success. Because of the agitation from the lorry and tanker

lorry owners Government was compelled to rescind the Notification SRO 340/03 relating to the fitment of speed governor whereupon the Supreme Court initiated suo motu contempt proceedings and consequently, Government issued Notification G.O.(P) No. 42/2006/Tran. Dated 27.7.2006 by which fitment of speed governor was again made mandatory for all stage carriages and heavy transport vehicles in the State. According to the respondents, fitment of speed governor is insisted not only for lorries but all heavy vehicles including stage carriages registered in Kerala. But fitment of such speed governor is not insisted for lorries entering from outside the State since it is not possible to incorporate the condition relating to the same in the permits issued by other States. Even though the power to issue notification under Rule 119 in the case of heavy vehicles and stage carriages registered in this State is now under the discretionary power of the State Government, it has no power to make applicable the notification to vehicles of outside State coming to the State. Fitment of speed governor is insisted in all the vehicles including those belonging to the KSRTC coming for registration or certificate of fitness.

6. I have heard the learned counsel appearing for the parties and also the Government Pleader. As per I.A. 309/2007 which is an impleading petition filed by one Kaloor Joseph, who is a social worker opposed the writ

petitions and the prayer made therein.

7. The main contention advanced on behalf of the petitioner is that the insistence of fitment of speed governors in the vehicles registered within the State of Kerala, whereas goods vehicles and inter state tanker lorries have no such restrictions imposed by the authorities and this virtually amounts grave discrimination among the same class of vehicles and hence Ext.P3 notification is bad in law. As a matter of fact, Ext.P3 produced in the case do not make any such discrimination as alleged. On an earlier occasion writ petitions were filed before this Court as O.P. 1718/1996 which culminated in the decision reported in **Ernakulam Private Bus Operators v. Regional Transport Authority (** 1986 KLT 712). The challenge in the said case was against the proceedings of the Regional Transport Authority insisting installation of electronic speed regulation device in private stage carriage vehicles limiting their speed to 50 kms. Per hour. After referring to Sections 48(3) (xxi) and Rules 178 and 369 (a) of the Kerala Motor Vehicles Rules the contention of the State that the Regional Transport Authority is authorized to impose speed limit was accepted. It was found that proceedings insisting for fitment of such device will only promote public good and will be conducive to public

safety especially in an over-crowded city like Kochi. The writ petition was accordingly dismissed. Subsequently, a public interest litigation was filed as O.P. 34466/2000 which was decided by judgment dated 24.9.2002 by a Division Bench of this Court. That was a public interest litigation raising the grievance that the nature of traffic in the State has deteriorated over the years and has now reached alarming proportions on account of the frequent accidents which continue unabated. After referring to the decision in Ernakulam District Private Bus Operators' case (1986 KLT 712) referred to above, it was noticed that sixteen years have elapsed then and the traffic in the city of Kochi and other cities and towns in the State has grown by leaps and bounds, become more disorderly and chaotic. After referring to Rule 118 of the Rules, it was held that the said rule has not made any change in the position in law which was noticed by this Court in the decision cited supra. As per the new Act of 1989 Section 72(2)(xxii) is identically worded with earlier Section 48(3)(xxi). Therefore, the power which was read into Section 48(3)(xxi) is very much readable into Section 72(2)(xxii) of the Motor Vehicles Act, 1988. It was held that the Regional Transport Authorities in every district in the State shall ensure that all stage carriage permits and heavy transport vehicle permits already issued or to be issued henceforth, shall contain a stipulation as to installation of a suitable speed

governor which would ensure that the vehicle is not driven at a speed in excess of what is notified in respect of the same. Even though review petitions were filed against the said decision, they were also dismissed and thus, the decision of the Division Bench of this Court has become final. Pursuant to the directions given by the Division Bench of this Court as aforesaid and because of the subsequent contempt proceedings, the State is obliged to implement the rule in letter and spirit and issued notification in the matter of fitment of governor as a condition for issuing permit s.

8. In the Notification Ext.P3 no distinction however, is made between a vehicle registered within the State or a vehicle registered outside the State in the matter of fitment of speed governor. As such, the allegation that there is any discrimination meted out by Ext.P3 on the face of it has to be rejected. It is true that the State is not able to implement fitment of speed governor as a condition for issuance of permit in respect of vehicles registered outside the State. As a matter of fact, when W.P.© 30549/2006 was filed before this Court, challenging the action of the State in insisting for such fitment of speed governors in relation to vehicles registered outside the State also, the State came with a statement that at present they will not take any action against the vehicles registered outside the State. Recording the said submission, the writ petition was closed.

Therefore, if in the matter of implementation of the notification the vehicles registered outside the State is treated differently, that is not a reason to hold the notification as bad in so far as it does not make any such discrimination. Petitioner has not sought for any writ of mandamus for implementation of the notification to all vehicles; on the other hand, they challenge the notification alleging discrimination which, I have already found against. Since the writ petitioners have sought to quash the notification on the ground of discrimination and in so far as the notification as such does not discriminate any vehicles whether registered within the State or outside, it cannot be held in any way discriminatory in character. Further, the State cannot be said to be acting in any arbitrary or unreasonable manner in the matter of not insisting such speed governors registered outside the State is concerned, since from the judgment in WP© 30549/2006 it could be seen that the stand taken was only for the present. As a matter of fact, some of the other States have already issued similar notifications insisting for fitment of such speed governors. Ext.P8(a) is one such notification issued by the Government of Andhra Pradesh produced along with the counter affidavit filed by the additionally impleaded party. Likewise, the State of Karnataka has also issued a similar notification as evidenced by Ext.R8(b). Therefore, the inconvenience and difficulties or

hardship that is highlighted in these writ petitions is only temporal as some of the neighboring States have already issued similar notifications and when once all the other States in exercise of their powers issued similar notifications, the inconvenience and hardship will be totally eliminated. But in view of the specific directions issued by the Division Bench of this Court directing the State to issue necessary notification in the matter of fitment of speed governors in vehicles registered within the State is concerned, it cannot be said that the State is acting in violation of the rules.

In these circumstances, I do not find any merit in the writ petitions. Accordingly, these writ petitions are dismissed.

P.R. RAMAN,
JUDGE.

knc/-